

**TOWN OF FOUNTAIN HILLS
MINUTES OF THE EXECUTIVE AND REGULAR SESSION OF THE
FOUNTAIN HILLS TOWN COUNCIL
November 5, 2009**

EXECUTIVE SESSION AGENDA

• **CALL TO ORDER**

Mayor Schlum called the Executive Session to order at 5:32 p.m. in the 2nd floor Fountain conference room.

AGENDA ITEM #1 – ROLL CALL AND VOTE TO GO INTO EXECUTIVE SESSION: PURSUANT TO A.R.S. REV. STAT. §38-431.03(A)(4), DISCUSSION OR CONSULTATION WITH THE ATTORNEYS OF THE PUBLIC BODY IN ORDER TO CONSIDER ITS POSITION AND INSTRUCT ITS ATTORNEYS REGARDING THE PUBLIC BODY’S POSITION REGARDING CONTRACTS THAT ARE THE SUBJECT OF NEGOTIATIONS, IN PENDING OR CONTEMPLATED LITIGATION OR IN SETTLEMENT DISCUSSIONS CONDUCTED IN ORDER TO AVOID OR RESOLVE LITIGATION (SPECIFICALLY, A DEVELOPER’S CLAIM FOR A SALES TAX REFUND).

ROLL CALL – Present for roll call were the following members of the Fountain Hills Town Council: Mayor Schlum*, Councilmember Contino, Councilmember Leger, Councilmember Brown, and Councilmember Archambault. Town Manager Rick Davis, Town Attorney Andrew McGuire and Town Clerk Bev Bender were also present.

* Mayor Schlum participated in the entire meeting through the use of teleconferencing equipment. Vice Mayor Hansen was excused from attending due to a conflict of interest.

Councilmember Archambault MOVED to convene the Executive Session at 5:32 p.m. and Councilmember Brown **SECONDED** the motion, which **CARRIED BY MAJORITY VOTE** (5-0).

Councilmember Dickey arrived at the meeting at 5:50 p.m.

AGENDA ITEM #2 – ADJOURN TO THE REGULAR SESSION

The Mayor, without objection, adjourned the Executive Session at 5:55 p.m. by a majority vote of the Council (6-0).

REGULAR SESSION AGENDA

* **CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Mayor Schlum called the meeting to order at 6:30 p.m. in the Fountain Hills Town Hall Council Chambers.

* **INVOCATION** – Pastor Steve Bergeson, Shepherd of the Hills Lutheran Church

* **ROLL CALL**

Present for roll call were the following members of the City Council: Mayor Schlum*, Councilmember Contino, Councilmember Leger, Vice Mayor Hansen, Councilmember Archambault, Councilmember Brown and Councilmember Dickey. Town Manager Rick Davis, Town Attorney Andrew McGuire and Town Clerk Bev Bender were also present.

* Mayor Schlum participated in the entire meeting through the use of teleconferencing equipment.

* **MAYOR'S REPORT**

(i) Update relating to the Mayor's attendance at the Urban Land Institute (ULI) Conference.

The Mayor advised that as a result of a scholarship from the Urban Land Institute he was fortunate to be able to attend their conference in San Francisco. He provided brief background information relative to the Institute and the benefits to be gained as a result of his attendance at this informative conference.

(ii) A review of upcoming community events.

Mayor Schlum discussed upcoming community events and noted that on Saturday, November 7th, the Desert Botanical Garden rededication and reopening will take place along Fountain Hills Boulevard near King Street at 9:00 a.m. and encouraged attendance. He advised that following that event there will be a ribbon cutting ceremony for the Docent led art walk that is just getting started at 9:45 a.m. in the courtyard between the Community Center and the Library. The Mayor thanked everyone for making the tours possible. Mayor Schlum added that on the same day at 7:00 p.m. the 3A State Football Tournament begins with the number one seated Fountain Hills High School Football Team, Falcons, hosting the #16 seated Window Rock in the beginning of the State Football Tournament. He noted that on Monday, November 9th the next Old Fashioned Town Hall meeting will take place at 7:00 p.m. at the Town Hall Chambers. He advised that Vice Mayor Hansen and Councilmember Dickey will join him there. The Mayor said that both Public Works and Planning & Zoning topics will be discussed. He encouraged the members of the public to attend the meeting and provide input in the open environment. He stated that there will be a Veteran's Day service at the Memorial on Veteran's Day at 9:00 a.m. and following that, on the same day, an 85-foot blue spruce from the Apache Sitgraves National Forest will be this year's U.S. Capital Christmas Tree and the first stop in the Valley is in Fountain Hills at the Target center on Shea Boulevard at 10:00 a.m. Mayor Schlum noted that the Fountain Festival of Arts & Crafts will take place on November 13th through the 15th along the Avenue. He commented on the numerous events that take place in the community and again encouraged everyone to attend.

SCHEDULED PUBLIC APPEARANCES/PRESENTATIONS

(i) **Presentation of the Town's "20 Years as a Town" celebration plans.**

Samantha Coffman, Director of the Community Center, addressed the Council and said that she and Recreation Supervisor Bryan Hughes were present this evening to highlight a brief presentation (a copy is available in the Office of the Town Clerk) relative to the upcoming incorporation celebration - "20 Years as a Town." She advised that they are co-chairing the Committee that is planning this event, which will take place at the Community Center on Saturday, December 5th from 3:00 p.m. to 4:00 p.m. She noted that they will have a ceremonial cake cutting and coffee followed by the program, which is from 4:00 to 5:30. She said that she hopes that at 5:30 everyone will head down to "Stroll in the Glow."

Recreation Supervisor Bryan Hughes, as part of the presentation, outlined a number of "municipal memories" (statistics relative to the history of the Town since incorporation). He provided the names of other Committee members working on the celebration.

Additional discussion ensued relative to the schedule of events, media associated with the event, the previous time capsule that was buried in January 1991 containing items commemorating the first 20 years in Fountain Hills and the fact that it was uncovered by Town staff on September 28th, the fact that the capsule will be on display in the River of Time Museum until the contents are revealed on December 5th, and additional events that will take place that day.

Mayor Schlum thanked Ms. Coffman and Mr. Hughes for their presentation and said that Vice Mayor Hansen has been working very hard on this event. He asked whether she had any comments to make.

Vice Mayor Hansen requested that citizens go on line and complete the survey (in 100 words or less describe a memory or a vision for the future).

ii) Presentation of Quarterly Budget Report for the period July 1, 2009 through September 30, 2009 for all funds by Deputy Town Manager Julie Ghetti.

Deputy Town Manager Julie Ghetti addressed the Council and provided a brief overview of the Quarterly Budget Report for the period July 1, 2009 through September 30, 2009 for all funds (a complete copy is available in the office of the Town Clerk).

Ms. Ghetti advised that with only three months of data, it is too early to predict how revenues for the rest of the Fiscal Year will come in but said that staff will continue to proceed cautiously with any expenditures.

Discussion ensued relative to all Town revenues, expenditures - all funds, General Fund revenues totaling \$3,076,166, local sales tax revenues (total collections of \$1.7 million), construction and retail tax collections (construction down 50.4% and retail down 9.9% from last year), General Fund expenditures totaling \$3,335,963, General Fund expenditures, the Program Budget - General Fund, Multi-Year projections - General Fund, the Program Budget - HURF, challenges that the Town will face over the next few years and declining building permit activity.

Ms. Ghetti advised that staff learned this week that Fountain Hills' share of State Shared Revenues for next year would be reduced by approximately \$800,000 and commented on the budget adjustments that would have to be made to accommodate the reduction in revenues. She added that the Budget Committee has already started to work on next year's budget and said that one of the things that they have to consider is that each decision they make is not a short-term solution but rather a five-year solution. She noted that they cannot fix this gap with one-time revenues or cuts in staff; they need to resolve it with a strategic solution. She stated that as they go through the budgeting process they will bring to the Town Council the best solution to solve the long-term sustainability of the Town. Ms. Ghetti indicated her willingness to respond to questions from the Council.

Mayor Schlum thanked Ms. Ghetti for delivering the news which, although not good, was necessary for everyone to hear.

Councilmember Leger commented on the reduction in sales tax across the board both in construction and retail and asked Ms. Ghetti if she saw any concerns regarding the Town's ability to meet their debt, specifically their mountain bonds and Town Hall, which were coming from the sales tax revenue.

Ms. Ghetti replied that fortunately, in the short term, they were able to accumulate a surplus in those funds because the economy was doing well. She added that hopefully the economy would pick up enough so that as they drew down on that surplus, they would eventually be able to recover enough to cover those payments. She said that that was definitely something that they were looking out for.

Councilmember Leger asked whether it was too early for the Town to begin looking at some policy changes. He stated that as Ms. Ghetti stated earlier, 85% of the Town's construction revenue was diverted from the General Fund and used for capital projects. He said that he would like to put out for her consideration as well as the Budget Committee's consideration, that they think about that policy because he would prefer to move monies out of the Capital Fund because they have more control over that (into the General Fund) rather than having to "dip" into their General Fund reserve and/or Rainy Day Fund. He noted that when they did the budget for 2009-10, they did create a Rainy Day Fund and

they had an estimated balance of \$1.3 million. He stated that regardless of what occurred they should have that fund balance at the end of the year.

Ms. Ghetti responded that the intention was that that fund would only be used in a real severe economic downturn. She said that staff was planning and hoping that that would not happen.

Councilmember Leger advised that that was something he too hoped would not happen but he would like the Budget Committee to consider, however, going forward as they started looking at possible restructuring/reorganization (that the Rainy Day Fund was out there). He added that that was something they should look at before going to a General Fund balance. He thanked Ms. Ghetti and the members of the Committee for their hard work in this critical area. He encouraged them to continue to look at ways to cut back on discretionary spending.

Councilmember Contino thanked Ms. Ghetti for coming up with the new software that they approved last year and said he thought it was going to be great to be able to tell everyone where all the monies were going instead of having it all "lumped up." He also thanked her for her presentation.

Mayor Schlum commented that it was a challenge for the Town this year working with the old system and the new one and now moving into the next year they would be able to compare apples to apples much more easily as far as the program budget.

Councilmember Dickey noted that the Town did not operate in a vacuum and they kept themselves aware of what was going on around them and throughout the State. She said that the amount they spend on public safety was pretty similar to their State Shared Revenues and some of the discussion that occurred last year and even the year before on a State level had to do with Shared Revenues. She commented on the importance of keeping their eyes and ears open. She reported that tomorrow the League Executive Committee was going to be voting on the budget items that affect municipalities, including the freeze on development fees, the freeze on building codes and a couple of other items that were a little more complicated to discuss. She added that they did have ramifications on the Town and obviously anything that was 40% of their operating budget that could get affected by something out of their control was very serious and that they should look beyond their border and advocate for the Town.

Councilmember Leger said that one of the last slides had to do with the General Fund (the graph) and asked that Ms. Ghetti refresh his memory. He stated that he was recalling from 2005-06 when they first started the Strategic Plan Initiative and did the Hockings report as well as long-term projections that this graph was not supposed to look like this until about 2015-16 and said that now they were looking at the inversion during 2010-11.

Ms. Ghetti concurred and advised that when the Strategic Plan was done, staff projected this exact scenario but in 2015 or 2016. She explained that what had happened since that time were two things: (1) when they made that projection they projected that the Ellman property would start to develop rather quickly, and (2) the downturn in the economy took place and the severity and length of it has had dramatic impacts. She said that they were where they thought they would be in 2016 but they were there now. She added that it was not a surprise that it came; it was just a surprise that it came this early.

Mayor Schlum said that they would be having more public discussions about this issue in the future and thanked Ms. Ghetti and the Committee for their efforts. He stated that they would look forward to receiving public input on this matter.

CALL TO THE PUBLIC

Town Clerk Bev Bender advised that one citizen wished to address the Council.

Gale Evans addressed the Council and said that she resided on Palisades Boulevard, just past Fountain Hills Boulevard going west towards the high school and has a truck and a 5th wheel, which she has to store elsewhere because there is no place on her property to put them. She stated that periodically she goes out and comes back, usually on business because she has a business license in Town for Senior Services, but she goes all over the State bringing supplies to lower income people, etc. She advised that she parks her 5th wheel and truck in front of her house to load or unload. She added that in reading the regulations, it states that residents have 48 hours in which to do this (park in front of residence to load/unload) but it also states, which is a contradictory statement, that residents cannot park in front of their homes between 2:00 a.m. and 4:00 a.m. She stated that she had spoken with every Code officer and knows every Sheriff by name and they all say they have better things to do than enforce that but if they receive a complaint, which they usually do, they show up at her house.

Ms. Evans commented that she pays her taxes like everyone else and stated the opinion that she should receive some sort of an exemption because it doesn't happen very often - perhaps once every two to three months, but when she brings them home after a delivery, the vehicles are dirty and she has to clean them up. She explained that during the day she is working so she doesn't have enough time to get everything unloaded and loaded for the next time out so she is near the 48 hours or less and it has always been less but invariably the Sheriff shows up and she just doesn't know what to do. She said she is not going to get up at 1:30 in the morning and move it for two hours and get up at 4:00 a.m. and bring it back. She added that apparently she is the only person who has this problem because there are many motor homes and recreational vehicles on side streets. She noted that one person has parked a vehicle outside of his house for nine weeks and has not had a problem because he is rebuilding the entire inside. She said that because she is on a high-profile street, she gets complaints and visits by the Sheriff every time. She added that she asked Safeway if she could park the vehicle in their lot even for the night and they said that would work for a while but she cannot do it all the time. She requested that the Council consider granting her some type of exemption to address her particular situation.

Mayor Schlum thanked Ms. Evans for her comments and explained that the Council cannot respond to her at this time but asked that the Town Manager to follow up with Ms. Evans in an effort to reach some acceptable solution to the problem.

Town Manager Rick Davis indicated his intention to follow up with Ms. Evans.

CONSENT AGENDA

AGENDA ITEM #1 – CONSIDERATION OF APPROVING THE TOWN COUNCIL MEETING MINUTES FROM OCTOBER 8, 13 & 15, 2009.

AGENDA ITEM #2 – CONSIDERATION OF APPROVING THE SPECIAL EVENT APPLICATION FOR THE THANKSGIVING DAY PARADE SPONSORED BY THE FOUNTAIN HILLS CHAMBER OF COMMERCE TO BE HELD ON NOVEMBER 26, 2009, FROM 9:00 A.M. – 11:00 A.M., WHICH WILL REQUIRE STREET CLOSURES: PARTS OF SAGUARO BOULEVARD, PALISADES BOULEVARD, LA MONTANA DRIVE, EL LAGO BOULEVARD AND PANORAMA DRIVE.

AGENDA ITEM #3 – CONSIDERATION OF APPROVING THE SPECIAL EVENT APPLICATION FOR THE STROLL IN THE GLOW EVENT SPONSORED BY THE FOUNTAIN HILLS CHAMBER OF COMMERCE TO BE HELD DECEMBER 5, 2009, FROM 6:00 P.M. – 8:00 P.M., WHICH WILL REQUIRE STREET CLOSURES: PARTS OF SAGUARO BOULEVARD AND AVENUE OF THE FOUNTAINS.

Councilmember Leger **MOVED** to approve the Consent Agenda as listed (Items 1 – 3) and Councilmember Dickey **SECONDED** the motion. A roll call vote was taken with the following results:

Councilmember Dickey	Aye
Mayor Schlum	Aye
Councilmember Leger	Aye
Vice Mayor Hansen	Aye
Councilmember Contino	Aye
Councilmember Brown	Aye
Councilmember Archambault	Aye

The motion **CARRIED UNANIMOUSLY** (7-0).

REGULAR AGENDA

AGENDA ITEM #4 – CONSIDERATION OF PAYMENT IN THE AMOUNT OF \$6,500 FROM THE 1% PUBLIC ART FUND TO THE ZUVA GALLERY FOR THE PURCHASE OF A STONE SCULPTURE ENTITLED “AN ALL DAY JOB.”

Parks & Recreation Director Mark Mayer addressed the Council relative to this agenda item and explained that the stone sculpture was on loan from the Zuva Gallery and has been in the park for a number of months while a fund raising effort took place by the Public Art Committee. He advised that the Committee was successful in raising a portion of the funds; however their efforts, given the current economic climate, had fallen a little bit short. He said that the good news was that the original price was \$25,000 plus sales tax and the Committee had been able to renegotiate the price down to \$15,000. He said that the Committee was requesting that the balance of the amount, \$6,500, come from the Public Art Fund. He noted that information provided to the Council showed that the current balance in that account is \$6,752. He emphasized that these funds were set aside specifically for the purpose of public art. He stated that both Jerry Miles and Sandi Thompson (members of the Committee) were present to respond to any questions from the Council.

Mayor Schlum thanked Mr. Mayer for his presentation.

Councilmember Contino **MOVED** to approve the expenditure of \$6,500 from the 1% Public Art Fund for the purchase of the "An All Day Job" stone sculpture and Councilmember Archambault **SECONDED** the motion.

Ms. Bender advised that Ms. Thompson wished to address the Council.

Public Art Committee Chairman Sandi Thompson addressed the Council and said that she was present to request the Council to authorize the issuance of a check in the amount of \$6,500 payable to Zuva Gallery in Scottsdale to complete their fundraising on "An All Day Job." She displayed a photo of the sculpture and noted that it was now in the park and they were able to get Zuva Gallery to reduce the price and were surprised that they were able to raise the money as quickly as they did. She noted that they were short \$6,500 but added that this was a classic example of what the 1% Public Art Fund was all about -- utilizing that fund if they really needed it. She added that they recently received contributions from former Mayor Wally Nichols and his wife Sheila as well as the Fountain Hills Foundation among others and they were able to raise \$8,500 towards the original purchase price. She stated that they were \$6,500 short of their goal and the use of the funds in the Art Fund would mean that this sculpture would remain in the park for the pleasure of all of the Town's residents and visitors. She thanked them for their consideration and support of their efforts to build the finest public art collection in the State of Arizona.

Mayor Schlum thanked Ms. Thompson for her comments and thanked former Mayor Miles for his attendance at the meeting. He said it was very generous of the Gallery to negotiate down so that the Town could take ownership of this piece.

There were no additional citizens wishing to speak on this agenda item.

The motion **CARRIED UNANIMOUSLY** (7-0).

AGENDA ITEM #5 – DISCUSSION WITH POSSIBLE DIRECTION TO STAFF ON COMMERCIAL A-FRAME AND BANNER SIGN REGULATIONS.

Planner Gene Slechta addressed the Council relative to this agenda item and highlighted a brief Powerpoint presentation on this issue (a complete copy of the presentation is available in the office of the Town Clerk). He advised that the discussion this evening concerned two usages of signs in Town that were set to expire on December 31st -- A-frame signs for commercial uses and at churches, and banner signs intended for special sales events. He noted that one of the Town Council's goals was to further economic development, business vitality and relationships between the Town and businesses to benefit the community. He stated that one objective for 2008 was to review the Town's signage regulations and amend them to support business vitality through visibility. He reported that that objective was met when the Council approved major amendments to the Sign Ordinance on November 20th of last year. He noted that as part of those amendments, commercial A-frames, including usages at Churches, were reinstated but given an expiration date of December 31st. He said that banners for special sales events were included as well with the same expiration date. He explained that the expiration dates were included as a mechanism to allow for a review of the impacts of the usages and compliance by the businesses.

Mr. Slechta stated that to assist the Council in that review, staff conducted two major activities to provide information. Staff announced and held an Open House for A-frame signs on October 19th and the event was advertised in the Fountain Hills Times, on the Town's website and on Channel 11. Surveys were created and provided to the attendees of the Open House. Staff also conducted three "drive arounds" in an attempt to quantify business complaints. He referred to the survey provided to business owners and the one provided to residents. He reported that despite multiple methods of communicating that the Open House would take place, attendance was sparse (lack of both business owners and residents). The business owners who did attend all supported the continued use of A-frames and offered some suggestions for improvements. The residents who attended were split with supporters suggesting a need for more attractive signs. In addition to the Open House, "drive arounds" were conducted on September 10th and 19th and on October 15th. The last two were conducted prior to 7:00 a.m., the earliest time that A-frame signs were allowed to be displayed per the Ordinance. He reported that consistently about two-thirds of the signs counted had one or more violations (left out after the hour allowed for display and signs placed in the Town right-of-way). He noted that there was an E-mail in the Council's packet from a resident and former Director of Tourism from a community in Michigan. Mr. Slechta said that regarding banners for special sales events, they required advance notification to the Town and he had no record of any such requests being made and added that they were used very infrequently. He outlined the Council's options and advised that they could do nothing, which would result in A-frame signs and banners for special sales events not being allowed after December 31st of this year; they could direct staff to initiate a Zoning Ordinance amendment to extend the expiration date for both types of signs for one, two or three years out, or the Council could direct staff to initiate a Zoning Ordinance amendment to remove the expiration date all together.

Mr. Slechta stated that if the Council wanted to continue the usage of one or both of these signs, then time was of the essence. Notification needed to appear in next week's Fountain Hills Times, Planning & Zoning would need to review the issue and make their recommendations at their scheduled November 30th meeting and the Council would need to approve the amendments on December 17th. He indicated his willingness to respond to questions from the Council.

Mayor Schlum thanked Mr. Slechta for his presentation.

Ms. Bender advised that there were no citizens wishing to speak on this item.

Mayor Schlum thanked staff for their efforts to reach out to the business owners and residents in an effort to obtain input and said that this initially came before the Council as a way for the Town to show its commitment to being business friendly and, through a collaborative process with the BVAC and Chamber of Commerce, it was worked on collectively and forwarded to the Council who ended up adopting the proposal for the most part. He added that they have been working on a solution for businesses they felt wanted it but it had not been a perfect process of course and that was why it was before the Council again. He noted that they had an option just to let it expire or they could consider the other options outlined by Mr. Slechta. He stated that he had people comment that they would like the A-frames to go away and he had businesses tell him very directly that they made a very big difference in the traffic that they saw in their stores. He added that they had input on both sides and in the middle somewhere they would find their happiness. He noted that there were certainly some businesses that were utilizing less than professional appearing signage and even multiple signs on the lot but it seemed as though most businesses had been utilizing the signs only on their property. He said that signs also continued to be placed in the Town's right-of-way and he was not sure if they were aware of what the right-of-way might be and stated that generally it was anywhere within three feet of the sidewalk and certainly would be the medians and the areas adjacent to any public road.

Mr. Slechta advised that most of the major streets had right-of-ways that were in the area of 8 to 14 feet from the pavement. He concurred that signs could not be placed in the medians.

Mayor Schlum said that some of the violations might be the result of confusion but added that staff had expended great effort to educate the community relative to the appropriate places to put signage. He stated that the hours were not good this time of year and having them out later did not make much difference because it was getting dark and the signs were not really visible so did not really do any good. He added that he would like the businesses to "step up" and police themselves. He noted that there were not that many that were causing the citizens concerns and most of the A-frames appear to be professional and follow the guidelines. He said that it would be great to have the other businesses be more aware because they would rather not spend staff time and money policing this type of effort. He emphasized that their number one priority was to help businesses be as successful as possible and part of that was to ensure that the Town looked great and that added value to the businesses as well as the residents.

Vice Mayor Hansen reported that at the joint meeting with the Planning & Zoning Commission she thought it appeared that people were leaning towards letting this go for at least another year. She stated that Commissioner Yates had some good suggestions as far as concentrating on enforcement and said that the businesses that were in compliance should be engaged in helping to educate the business owners that were leaving their signs out later or putting them where they were not allowed to be. She said that Commissioner Yates placed emphasis on more education during the upcoming year and businesses helping businesses to comply.

Councilmember Archambault advised that he read the comments that they received and it was pretty apparent that more education needed to go on pertaining to the A-frame signs. He agreed with the Vice Mayor's comments relative to being more proactive. He said that nobody liked to have their signs taken down; they took that as a threat but if they could go into the store and perhaps talk to the merchant and explain what the signs were for – and that they were not for directional signs -- it might help. He asked if Mr. Slechta had heard anything about the banners.

Mr. Slechta replied that he had not received any feedback at all on the banners and the Town had not received any official requests for them.

Councilmember Archambault stated that he would be in favor of at least trying it for another year and being a little more proactive with explaining that A-frames were not to be used as directional advertisement but for specials. He added that he understood the merchants' concerns but what he did not want to see happen was a proliferation of A-frame signs like they saw in the past and had to deal with. He said that he would like to help the businesses if he could.

Councilmember Leger concurred with the Vice Mayor and Councilmember Archambault's remarks and stated that he would like to see this extended for another year, particularly with the downturn in the economy. He added that when you looked at the A-frame Sign Ordinance it really was not that complex and delivering that sheet to each business person he would hope would be enough to have people comply. He noted that during the joint meeting Commissioner Yates also talked about the fact that maybe the Town should require businesses to take out a permit in order to have an A-frame and perhaps not necessarily charge them or charge a minimal sum. He explained that the purpose of that would be for the business owners to have a face-to-face meeting with staff so that they could learn the rules of the Ordinance, which would then help prevent the Town from expending a lot of labor costs resulting from non-compliance. He stated that he was not sure who was observing what, but his observation since they put this in place is that 50% of the signs out there were in violation -- they were in medians, they were the wrong size, they were unprofessional looking, etc. and the Town had been extremely lax and allowed it to unfold in an effort to help businesses. He added that as far as the notion of a permit or some type of regulation, he believed that was the only way they were going to be able to provide the type of education that was needed out there. He said that if Council had an opportunity to read the surveys, he found them very interesting though sparse because the business owners themselves said that they wanted the folks that were violating brought into compliance because they did not want to lose this privilege. He added that it was the business owners themselves that were suggesting a permitting process. He advised that a few of the residents, although a hand full of them were very much opposed to it and some straddled the fence, also suggested the same thing. He said that they needed a way to regulate this and he did not think it was too much to ask people to get a permit. He added that even if they did not charge at all, they were going to save a lot on labor having people come to Town Hall rather than having staff ride around.

Councilmember Leger further stated that on one of the surveys someone asked what the words "for promotional purposes only" meant and he expressed the opinion that it would be helpful to enhance the definition of promotional because a lot of the current signs were directional. He summarized by saying that the Chamber, the sub-committees, Planning & Zoning and staff had all done some great work and they wanted to help the businesses out. There were some violations out there but they could be remediated very simply and it was an educational process. He said that how they put out the information was important and when they brought this forward the group did do education but in some cases it might have fallen on deaf ears. He stressed the importance of having some type of mechanism in place to make that happen.

Mayor Schlum said that some very good comments were received from the business owners and the public. He commented on some signs that said "Now Open" when the businesses had in fact been open for over a year. He agreed that they needed to ask their business owners to "clean that up" and stated that it was not really effective when signs were not relevant or accurate. He asked Mr. Slechta what the process would be to "tweak" the regulations further.

Mr. Slechta advised that the Council would have to initiate an amendment to the Ordinance. He added that if they did some "tweaking" because of Proposition 207 he would like to know whether they had to be clear on those types of changes and restrictions again.

Town Attorney Andrew McGuire stated the opinion that the primary focus of having the hard deadline in there in the first place was to avoid any, albeit likely to be the remote chance, but any chance at all that they would have a 207 claim on it. He added that there would probably be a very remote chance that "tweaking" any of the provisions would result in a challenge -- especially a "tweak" to say "Promotional not directional" and extending the date out another year. He said that he could not imagine that they would have any problem with that.

Councilmember Contino stated that he believed what they had done was great and had helped a lot of the businesses. He added that they had to go back to when they had all of the real estate signs out and Code Enforcement was enforcing the regulations like crazy. He said that they had to go back and "nip" the people who were keeping their signs out 24/7 and that were not in compliance and that should be Code Enforcement. He stated that he knew they were starting to do that but they had to get back out there and enforce the regulations.

Mayor Schlum noted that the businesses themselves had asked the Town to police those who were not following the Ordinance. He said that many of the comments spoke to perhaps having the Chamber help them out and added that perhaps they should reach out to the Chamber a bit more. He stated that they could make some modest "tweaks" to the language in the Ordinance itself in order to be clear but as far as policing, obviously they would like to limit how much time Town resources go into that and would ask businesses and others to get involved. He added that to be sensitive to Councilmember Contino's comments, it was true that every week that went by there seemed to be another sign that was "pushing the limit" and so it was not getting better and they needed to take some action in order to help themselves and the businesses that were complying.

Councilmember Brown said that A-frames were a controversial subject and the business owners needed to look at them as a gift and treat them as such because two years ago those signs were outlawed and business people and the Chamber came before the Council and asked that we give the business owners a break and they continually put it back in our face by not picking their signs up at the right hour of the evening and when they set them out they were setting them out in the public right-of-way or in the middle of the sidewalk. He stated the opinion that it would not be out of line for them to explain to the business people that it was a gift that the Council was giving them and they could take that gift away just like they did several years ago for the exact same problems that they were having today. He added that he believed that asking the business people to come in and actually have their signs permitted was a good idea and he believed possibly free of charge would be the answer but in the process of picking the permit up, they needed to read and sign that they had read the entire Ordinance on A-frame signs. He said that maybe some of the business owners did not understand it. He spoke in support of bringing the business people in with their signs, reviewing the signs to make sure they were in compliance, educating the people on the Ordinance and giving them a break especially during these difficult economic times. He stated that they could extend this one more year without any problems but he would also like to think that the business people, if given another year, would police themselves and abide by the Ordinance.

Councilmember Dickey asked if they extended it whether they could do that with direction to staff that was not in a motion to investigate permitting and maybe even charging a modest fee. She advised that she had two business people suggest that a fee might help compliance.

Mr. McGuire responded that at least a reference would be necessary in this section relative to a permit if that requirement was going to be included so staff would like to have some direction relative to that in the motion. He added that he believed they had a companion to it when they did the permitting on A-frame signs before so there might be another ordinance that came along with it but it was really nuts and bolts. If staff got direction from the Council that they wanted to do the licensing, they had been there before and it would not be difficult to implement.

In response to a question from Councilmember Dickey, Mr. McGuire advised that the motion would have to initiate the Zoning Ordinance amendment to allow for continuation of A-frame signs for another year. He said there would be minor "tweaks" for a business license and clarifying promotional uses.

Mayor Schlum advised that as they heard during the fiscal update this evening from the Deputy Town Manager, they were going to have fewer and fewer resources to police things and that would probably also include the inability to add staff to carry out permitting activities at a desk and he was not sure what the work load would be but from the number of signs out there that was quite a bit. He added that obviously they wouldn't have to come in very often because the signs would last quite a while. He said that he would just caution them on having a permitting process. He said that he liked the idea but he just did not know if this was the time to do it. He expressed the opinion that the A-frame signs were not terribly out of control right now but they were starting to move in that direction and the Town had not been real diligent with enforcement because they wanted to do all they could to help businesses succeed. He added that they really were going to have to ask businesses to help them with this issue directly if this benefit was going to remain in the Ordinance.

Councilmember Archambault **MOVED** to initiate a Zoning Ordinance amendment for a one-year extension, that they include in the amendment a clear definition of "promotional", and that they initiate a permitting process for the signs and Councilmember Dickey **SECONDED** the motion.

Mayor Schlum asked whether the motion was clear enough. Mr. McGuire said that the only thing staff would like a little more clarification on was whether this would be a free permit or would there be a nominal fee charged.

Councilmember Archambault expressed the opinion that there should be a nominal fee in order to at least cover a little bit of staff's time. He said that a nominal fee would not be out of line. Mr. Slechta said that they were talking about two different types of signs (banners as well) and asked if that should be in the motion as well. Mr. McGuire stated that he assumed that they were including everything.

Vice Mayor Hansen noted that if businesses were going to use balloons they had to notify the Town; it was not a permitting process. Mr. Slechta asked whether banners for special sales events would be allowed after December 31st and Councilmember Archambault advised that the motion was inclusive; he was making the motion to be inclusive of the banners and Councilmember Dickey said that she would second everything that Councilmember Archambault said.

Councilmember Leger clarified that the permitting process would be for the A-frames but not for the banners. He added that there appeared to be some disagreement relative to not charging a fee and he suggested that for the first year they not charge a fee and just get the folks in. He noted that not charging a fee would be less labor intensive and stated that they had the option at the end of the year to review this and if they found out that it was extremely labor intensive then at that point a fee should be assessed for year two.

Councilmember Archambault noted that the motion was for a nominal fee. Vice Mayor Hansen suggested that the fee could be \$5.00.

Councilmember Brown concurred with Councilmember Leger's remarks relative to not charging a fee for the first year to see how it went and said that they would then have a chance to look at charging a fee the second year should the process be labor intensive. Mayor Schlum questioned if the motion needed to be amended.

Councilmember Dickey said that they just had a presentation on their budget and noted that trends were starting to go for "fee for use" and they had also had discussion relative to the fact that it appeared that 50% of the sign users seemed to be out of compliance and the Town was not able to have Code Enforcement regulating them so she would say that even if the fee was small, i.e. \$5.00 or \$10.00 or even \$25.00, if the Town could get some revenue coming in that would at least assist them not only in looking for the people that were violating but also in the education process. She noted that the fee did not have to cost a lot of money but it would be enough to assist the Town in carrying out its duties. She stated support for continuing to look at charging a small fee.

Councilmember Contino said that he believed that they were overlooking something like, for example, companies like his wife's company, which was a very small one that struggled to make ends meet half the time. He added that they were "tacking and tacking and tacking." He asked how many people sitting at the dais had businesses that could use A-frame signs and answered "nobody." He expressed the opinion that they were making judgments not realizing that if they kept on tacking money and doing things, there were impacts. He emphasized that this was why the Town had Code Enforcement and they were out there to do one thing and that was stress the regulations of the Code. He added that they just could not keep saying "dollars, dollars, dollars" to businesses because they would be pushing them out of the door.

Mayor Schlum stated that what he heard was a suggestion to charge a nominal fee, \$5.00 or \$10.00 and, in his opinion, that would not push anybody out of the door, it was simply trying to cover some of the expenses associated with a permitting process. He noted that the process would utilize more man hours. He added that Councilmember Contino mentioned utilizing Code Enforcement personnel and said that they were used to

address issues that were out of compliance and it seemed to be the effort of the Council tonight had been talking about a permitting process that would provide an additional educational opportunity at the front end to make sure the users of the signs understood what the Ordinance said, perhaps look at their signs and place little stickers on them saying that they had obtained a permit. He expressed the opinion that a one-time nominal fee annually of \$5.00 or \$10.00 would not appear to be business unfriendly or push businesses out the door. He added that the Town certainly did not want to cause harm to businesses at this time when they were most vulnerable; they just wanted to find a way to be responsible for managing costs. He commented that as far as the permitting issue, what concerned him most was that it added more enforcement potentially to the issue (to check all of the signs that were out there and make sure they had a permit and look at all the signs that were not in compliance with the Ordinance) and that was what he wanted to caution the Council on.

Councilmember Brown indicated that he could support a \$5.00 fee and added that the other thing they needed to talk about was a timeline of when the users needed to have the signs permitted. He stated that if they were going to go through the permitting process by January of 2010 the signs should be permitted.

Councilmember Dickey agreed that they were not talking about charging a lot of money but she was afraid that as they moved forward, based on financial forecasts, the Town would not be able to be as proactive as they would like to be. She said that she also thought that the residents and the people did not want any of these signs and as Councilmember Brown stated, this had been going on for a long time and it was not an easy decision to even allow them to continue. She added that she wanted to also bring those folks into the discussion – the people who did not want them at all – and at least this way they might show some control over what the signs would look like and also they would not be taking tax money away from other functions that the Town could do in order to continue to enforce the extension that they were giving. She reiterated the opinion that some people did not want the signs at all and that was why she thought this was a good compromise.

Vice Mayor Hansen stated that if there was a permitting process and a business owner did continue to violate the Code, i.e. had the sign out all night or placed it in the public right-of-way, she would like to know what the penalty would be and what steps would be taken if they violated the terms of their permit.

Mayor Schlum asked whether fines or fees would be assessed and whether staff would collect the sign. Mr. Slechta replied that at the present time, signs would be confiscated

Vice Mayor Hansen asked if there would be any benefit to just saying if that happened numerous times they would lose their permit in which case they could no longer put out a sign. She said that that was a little bit stronger.

Mayor Schlum expressed the opinion that the Vice Mayor's suggestion made sense. He added that there had been some good dialogue on the issue and asked whether these items potentially had to be included as an amendment to the original motion.

Mr. McGuire advised that the initial motion as restated was covering everything because it included the nominal fee and the clarification language. He said that the implementation would already be no earlier than the 17th of January based upon the 30-day waiting period after an ordinance was adopted, so January was when the permitting process would come into being.

Councilmember Contino asked whether they were talking about all the realtor's signs when they talked about A-frames (paying permit fees).

At the request of the Mayor, Mr. Slechta clarified that the A-frame signs they were discussing this evening were strictly the ones that were used for commercial purposes and churches. He said that A-frame signs that were used for garage sales or real estate signs were not covered under this part of the Ordinance.

Councilmember Contino pointed out that real estate signs sat out 24/7 now in front of their businesses and asked how they would differ. Mr. Slechta responded that they should not be out 24/7. Councilmember Contino stated the opinion that a double standard existed.

Vice Mayor Hansen said that she thought real estate signs were covered in a different part of the Code and could be enforced according to that section and Mr. Slechta replied that that was true.

Councilmember Leger advised that he could live with a \$5.00 fee and added that he would like to address the notion of Code Enforcement. He said that there were probably more Code violations in Town currently than they could enforce and stated that they could probably add Code Enforcement staff but as the revenue stream went down, they might even have to look at decreasing Code Enforcement (worst case scenario) so they needed to start finding new methodologies for managing the less serious scenarios. He added that one of the reasons A-frame signs went away was they were such a pain and they required too much Code Enforcement and that added fuel to the fire to totally do away with them. He said that they would be looking at this for a year and if the permitting scenario provided the needed education then his goal would be met. He stated that the permitting process would provide an opportunity for face-to-face discussion and education so that everyone could be successful and they could minimize the need for Code Enforcement services.

Vice Mayor Hansen noted that one thing that was brought up that had not been decided on was the permitting process and whether signs would have to be brought in to be reviewed by staff. She said that she was not sure they wanted to require people to bring in their signs and suggested that perhaps they just brought in an actual diagram or a picture of the sign that they could attach to their application. Mayor Schlum said that the suggestion made sense. Mr. McGuire stated that the process they had used before was a sticker that was placed on the sign, which was easy for Code Enforcement to see. Mr. McGuire confirmed that they had enough of a motion to move forward and vote at this time.

The motion **CARRIED UNANIMOUSLY** (7-0).

Mayor Schlum again thanked Mr. Slechta for his presentation and noted that sign illustrations were available on line for people to view. He added that they would work with the Chamber to ensure what the ordinances were what they were going to become.

AGENDA ITEM #6 – CONSIDERATION OF ORDINANCE 09-14, AMENDING THE FOUNTAIN HILLS TOWN CODE, CHAPTER 2, MAYOR AND COUNCIL, ARTICLE 2-1, COUNCIL, RELATING TO VACANCIES IN COUNCIL.

Town Clerk Bev Bender addressed the Council relative to this agenda item and stated that at the October 13th Work Study Session, the Council indicated an interest in having a Town Code amendment brought forward for their consideration that would add the flexibility for an election to be added to the appointment option currently provided for in the Town Code. She stated that the Councilmembers also discussed adding the option of filling a Mayor vacancy by appointment from among the remaining seated Council. She advised that Ordinance 09-14 was drafted to give the Council the flexibility currently available under State Statute and that it also provided the Council with the ability to fill a Mayor vacancy by appointment from existing Councilmembers. She added that the Council vacancy could then be filled using one of the methods established in State Statute. She noted that the period of time to fill the vacancy was addressed with the term “reasonable” as each vacancy would present different situations that would need to be taken into account when a vacancy occurred. Ms. Bender indicated her willingness to respond to questions from the Council. Mayor Schlum thanked Ms. Bender for her presentation.

Councilmember Archambault **MOVED** to approve Ordinance 09-14 and Councilmember Contino **SECONDED** the motion.

Ms. Bender stated that there were no citizens wishing to speak on this agenda item.

Councilmember Leger advised that he was comfortable with Provision A, “The Council shall fill any vacancy that may occur on the Council by the method provided by State statute,” which they talked about and which gave them the two options – appointing or going to the next election. He said that he got a little “twisted around” the Mayor assignment in terms of the way it was articulated – “In the case of a vacancy that might occur in the office of Mayor the Council shall appoint from the remaining Councilmembers one person to serve as Mayor for the remainder of the Mayor’s term. The Council shall then fill the alternate position.” He advised that he was wondering whether there needed to be some type of timeline on that. He asked if the Mayor’s remaining term was only six months whether they would they want to fill it. He said that he was not sure. He questioned whether they should have something in there for the Mayor like they did for the Council (to the next election). He commented that he knew that this group was contemplating a future possible ordinance to include a 4-year Mayor term so if they had an ordinance here now that basically said for the remainder of their term that could possibly be three and a half years and you could possibly have elections in between there. He commented that he was comfortable with Provision A and he was a little uncomfortable with Provision B. He expressed the opinion that it was a little too open ended and perhaps needed to be tightened up. He said that he wanted to bring that up for consideration.

Vice Mayor Hansen stated that going to the four-year Mayor term would be a time consuming matter and said that she would be comfortable moving forward with this while the term was two years since the four year change would require an election. She reiterated that they were talking about a significant amount of time and added that if the term did go to four years it would be easy enough to modify the language for the four-year term.

Mr. McGuire stated that coming away from the last meeting it was pretty clear that the direction from the Council was to keep it simple and the simplest thing they could think of was while they had a two-year Mayor term appointing for the remainder of the term was never going to be more than two years, until the next election, so they kept it that way understanding that they might have to address this later.

Councilmember Leger said that he was comfortable with that and just wanted to mention it so it would be in the record for future discussion. He added that if there were only six months remaining on a Mayor’s term, they would appoint someone for six months and so a Council person would step up and maybe they had two or three more years left on their term. He stated that that would be quite unusual. He further commented that if they were only talking about a six month term, he would suggest that the Vice Mayor assume the responsibilities of Mayor for the six months.

Vice Mayor Hansen noted that it could be for eight months because that was how long the Vice Mayor served in that capacity. Councilmember Leger further stated that if there was only a year left on a term that made sense but if there were only six months left on a term that did not make sense. He expressed the opinion that it did not seem logical and stressed the importance of keeping the process simple.

Mayor Schlum discussed the importance of having a Mayor in place adding that there was plenty of talent and ability on the Council. He stated his preference to fill that vacancy until an election was held should it need to be filled.

Vice Mayor Hansen commented that if the time was that short maybe the action would just be not to fill the vacant Council seat. Councilmember Leger said that that was what he was recommending. Discussion ensued relative to the fact that the Council did have that option due to the “reasonable” time language in the proposed Ordinance and that the way the Ordinance was written provided sufficient flexibility to do that.

Ms. Bender advised that Councilmember Contino had requested a roll call vote. A roll call vote was taken with the following results:

Councilmember Archambault	Aye
Vice Mayor Hansen	Aye

Councilmember Contino	Aye
Councilmember Leger	Aye
Councilmember Brown	Aye
Councilmember Dickey	Aye
Mayor Schlum	Aye

The motion **CARRIED UNANIMOUSLY** (7-0).

Mayor Schlum thanked Ms. Bender for her research and assistance in coming up with a good solution for the Town.

AGENDA ITEM #7 – COUNCIL DISCUSSION/DIRECTION TO THE TOWN MANAGER

Items listed below are related only to the propriety of (i) placing such items on a future agenda for action or (ii) directing staff to conduct further research and report back to the Council.

A. *NONE*

AGENDA ITEM #8 – SUMMARY OF COUNCIL REQUESTS AND REPORT ON RECENT ACTIVITIES BY THE TOWN MANAGER.

Discussion ensued relative to previous direction to the Town Manager to look into the situation presented earlier by a citizen (Ms. Gale Evans). Mr. Davis stated that he would look into that matter and report to the Council on his findings.

AGENDA ITEM #9 - ADJOURNMENT

Councilmember Contino **MOVED** to adjourn the meeting and Councilmember Brown **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (7-0). The meeting adjourned at 8:00 p.m.

TOWN OF FOUNTAIN HILLS

By _____
Jay T. Schlum, Mayor

ATTEST AND
PREPARED BY:

Bevelyn J. Bender, Town Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Executive and Regular Session held by the Town Council of Fountain Hills on the 5th day of November 2009. I further certify that the meeting was duly called and that a quorum was present.

DATED this 19th day of November 2009.

Bevelyn J. Bender, Town Clerk